

**IN THE UNITED STATES COURT OF APPEALS  
FOR THE ELEVENTH CIRCUIT  
NO. 04-16220-AA**

DENNY C. CORMIER,

Plaintiff-Appellant, pro se

V.

MARIA GREEN, Acting Director,  
Georgia Department of Human Resources, in her official capacity and,  
GEORGIA DEPARTMENT OF HUMAN RESOURCES and,  
BRUCE E. COOK, Chairman,  
Board of Human Resources, in his official capacity and,  
GEORGIA BOARD OF HUMAN RESOURCES and,  
COLQUITT COUNTY SUPERIOR COURT,  
The Honorable H. Arthur McLane, Chief Judge, in his official capacity.

Defendants-Appellees.

**REPLY BRIEF-APPELLANT**

**DENNY C. CORMIER**

**APPEAL FROM THE UNITED STATES DISTRICT COURT  
FOR THE MIDDLE DISTRICT OF GEORGIA**

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## INTRODUCTION

In his initial brief the Appellant argued the District Court overlooked the general challenge to the Georgia alimony statutes and had jurisdiction to hear such claims under D.C. Court of Appeals v. Feldman, 460 U.S. 462, 486, 103 S. Ct. 1303, (1983) and progeny related to general constitutional challenges to state statutes in federal court. The District Court should have retained jurisdiction for the general challenge.

The Appellant further argued that the federal courts retaining jurisdiction on federal questions is the rule and that abstention is the exception.

In 1992, the Supreme Court noted that it had "never applied the notions of comity so critical to Younger's "Our Federalism" when no state proceeding was pending . . . ." Ankenbrandt v. Richards, 504 U.S. 689, 705 (1992).

For the Younger abstention (Younger v. Harris, 401 U.S. 37, 91 S.Ct. 746, (1971)) the three Middlesex criteria ( Middlesex Ethics Committee v. Garden State Bar Assn., 457 U.S. 423, 432-437 (1982)) of ongoing state proceeding, important state interest, and opportunity to raise the claims must be available. The Defendants and now Appellees have never raised any state interest let alone an important one in all their writings including their

Appellees' brief. The District Court sua sponte raised that alimony was an important state interest. The state Appellees silence on any state interest at issue is an indication the interest was not important.

Further, the state proceeding had been properly removed to federal court and thus no ongoing state proceeding existed to validate abstention.

The District Court's order acknowledged the pleadings created a valid cause of action including the 42 U.S.C. 1983 claim.

The District Court order of abstention overlooks the 42 U.S.C. 1983 claim raised against the state court defendants to which it wishes to send the Appellant.

By overlooking the 42 U.S.C. 1983 claim, the effect of the District Court order is to send the Appellant back to the Defendants to adjudicate his rights and the claims he has raised against them, i.e. liberty interest, privacy and property rights.

The effect of the District Court's order is to send the Appellant back to the Defendants to adjudicate federal and state law claims against them in a state proceeding to which they are not parties--not to mention the conflict of interest created for the state court.

The District Court order acknowledges the Appellant's argument raised before it that he will have to subsidize the state defendant's to argue

against his constitutional challenge to the state statute. The fee shifting provision to which he will be subjected in state court creates a separate due process problem. The District Court's order to this issue is that he will only have to pay opposing party fees if he has the ability to pay. Forcing the Appellant to a situation where he must subsidize with statutory awarded attorney fees to his wife to make arguments for the benefit of the state represents both a violation of due process and a state taking action.

### **APPELLEES' ARGUMENTS**

#### ***Arguments not challenged***

Appellees do not argue against or challenge the Appellant's general constitutional challenge to the state alimony statute as raised in the pleadings and Appeal Issue I. Appellees do not argue against any of the constitutional challenge arguments raised before this court or the District Court on fundamental rights or liberty interest infringement by Georgia's alimony statute.

#### ***Standard of Review***

Appellees argue this court standard of review to be abuse of discretion by framing the District Court order as a declaratory judgment order. The court order is a ruling on abstention to which this court must apply a de novo

standard of review. Taylor v. Jaquez, 126 F.3d 1294, 1296 (10th Cir. 1997) and Lucero v. Operation Rescue, 954 F.2d 624, 627 (11th Cir.1992).

***Arguments agreed with...***

Appellees' brief agrees with Appellant's argument (page 16),

"In his brief to this Court, Cormier contends that the District Court should have entertained his lawsuit since Younger did not apply since he had no pending suit in superior court at the time the motion to dismiss was decided. While that may be technically true, [the District Court had no notice of the removal of the superior court case, and thus the Court ruled correctly.]"

Appellees agree with the crux of Appellant's argument and offer no case law or rules why this technically correct situation should not prevail.

***Errs in Appellee's Argument***

Appellee's brief errs when it relies on Ankenbrandt v. Richards, 504 U.S. 689, 705 (1992) for the District Court's lack of jurisdiction predicated on the case being a domestic relations case. The Ankenbrandt holding restricts the granting of a divorce decree, alimony or child custody award to the state court. The Appellant specifically pled he not request any of those remedies from federal court, therefore Ankenbrandt is inapplicable.

(Complaint at 17)

Appellees' brief erroneously states (page 10),

"Cormier brought this cause of action for declaratory judgment and injunctive relief, but failed to reveal to this court that at the time he filed this lawsuit and at the time he filed his brief with this court that his court proceeding was ongoing in Colquitt Superior Court.... The reason Cormier attempted to keep this knowledge from this court is his attempt to circumvent Younger abstention ....

Appellant in his pleading in this lawsuit informed this court of his ongoing state proceeding. (Complaint at 27) The District Court order acknowledged this in its opening sentence.

In his removed case the Appellant faithfully and accurately completed the JS44 form informing the District Court that this lawsuit was related to the removed filing. The Appellant fulfilled all rules and case law requirements as to informing the District Court of the related cases. The Appellees offer no rule, statute or case law that the Appellant violated as to properly informing the District Court of concurrent cases.

As to not informing this 11th Circuit Court that the Appellant's removed lawsuit had been remanded, the Appellant felt that the appellate issues before this court were related to the final order issued by the District Court in August 2004...not to current proceedings or subsequent results in another case. Again the Appellees fail to provide any precedence, i.e. case law, or rule that the Appellant failed to fulfill by not informing this court of the current state of the related removed case. The Appellant's failure to

notify this court of the current state of his removed case is a good faith lack of knowledge of his obligation to do so, if such an obligation exists supported by law. No subterfuge was ever attempted or intended.

Appellees' brief erroneously states (page 11),

"When Cormier was faced with the Younger abstention in the Defendant's Motion to Dismiss, he quickly and improperly removed his superior court divorce proceeding to the federal forum to circumvent this doctrine."

Appellant removed his state court proceeding to federal court because the harm he anticipated was imminent. Contempt proceeding related to the challenged statutes placed him at risk of immediate loss of liberty interest, privacy rights, and property rights as claimed in this lawsuit. The state court events were creating the exact 42 U.S.C. 1983 claim he foresaw when he filed this lawsuit.

There was no finding that the removal was effected improperly. The removal was not effected to circumvent the risk of an abstention ruling in this lawsuit but to protect his fundamental rights and liberty interest.

The District Court's admonition to the Appellant regarding sanctions was not contained in the challenged final judgment but in the order denying reconsideration. The Appellees' brief errors on this point.

The Appellees offers comity as the valid reason for the District Court's Younger abstention ruling. The cases the Appellees' brief cites all relate to a state interest at issue. (Appellees Brief page 13) Here, none of the Appellees ever offered to the federal District Court or this court any state interest let alone an important state interest issue for which the federal court should demur to the state court.

The Appellees' brief argues for abstention for comity reasons. The District Court has acknowledged a valid 42 U.S.C. 1983 claim against the Appellees state court and state agents. It does not seem reasonable to demur for comity reasons to a state court against which a valid cause of action has been stated.

Appellees' brief erroneously states (page 17),

"Here, Cormier does not allege irreparable injury and, in fact, does not even allege harm whatsoever for the superior court to handle each and every issue raised in this proceeding. He simply does not care for Georgia's alimony laws or the current orders he is receiving from the superior court and wishes them overturned."

Appellant does allege injury that is irreparable. (Complaint 89, 90, 123)

Appellant specifically pled he did not want state court orders overturned as a remedy for his lawsuit. (Complaint at 18)

## CONCLUSION

For the above stated reasons this Court must rule that the District Court must entertain the general constitutional challenge to Georgia's alimony statute; absent the state Defendants offering an important state interest at issue and absent an ongoing state proceeding the Younger abstention is inapplicable; the Appellees request for sanctions lacks foundation' and that this court remands to the District Court all claims in this lawsuit for adjudication commensurate with the Appellant's arguments.

Respectfully submitted,

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DENNY C. CORMIER, Pro se

Dated: April 20, 2005

### **CERTIFICATE OF SERVICE**

I, Denny C. Cormier, hereby certify that on April 20, 2005 the original and six (6) copies of the foregoing brief, and one diskette, were sent via U.S. Express Mail to the United States Court of Appeals for the Eleventh Circuit, and one (1) copy of the foregoing brief, was sent via U.S Mail to John J. Jones, Senior Assistant Attorney General, and Laura W. Hyman, Assistant Attorney General, Department of Law, 40 Capitol Square, S.W., Atlanta, Georgia 30334-1300, and to Dwight May, Esq., Attorney for Nancy B. Cormier, P.O. Box 1660, Moultrie, GA 31776.

### **CERTIFICATE OF COMPLIANCE**

1. This brief complies with the type-volume limitation of Federal Rule of Appellate Procedure 32(a)(7)(B). The brief contains 1,983 words, excluding the parts of the brief exempted by Federal Rule of Appellate Procedure 32(a)(7)(B)(iii).

2. This brief complies with the typeface requirements of Federal Rule of Appellate Procedure 32(a)(5) and the type style requirements of Federal Rule of

Appellate Procedure 32(a)(6). The brief has been prepared in a proportionally spaced typeface using Microsoft Word 2000 in Times New Roman, 14 pt.

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